



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733**

May 31, 2013

Mr. David Levenstein
EIS Document Manager
Office of Environmental Compliance (EM-11)
U.S. Department of Energy
P.O. Box 2612
Germantown, MD 20784

Dear Mr. Levenstein:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Supplemental Environmental Impact Statement (DSEIS) prepared by the U. S. Department of Energy (DOE) for the Long-Term Management and Storage of Elemental Mercury. The EPA and the U.S. Bureau of Land Management are cooperating agencies in the preparation of this NEPA document.

The Mercury Export Ban Act (MEBA) of 2008 amends the Toxic Substances Control Act, effective October 14, 2008, to prohibit, any Federal agency, any state or local government agency, or any private individual or entity, from conveying, selling, or distributing any elemental mercury under the control or jurisdiction. It also prohibits the export of elemental mercury from the United States effective January 1, 2013. For these reasons, DOE must identify a facility where mercury can be safely and securely stored.

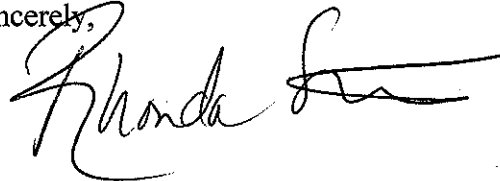
To evaluate a range of reasonable alternatives for siting, constructing, and operating such a facility or facilities, DOE prepared a Mercury Storage Draft and Final EIS in 2010 and 2011, respectively, to meet its obligations under the MEBA and NEPA. DOE's January 2010 EIS evaluated seven (7) candidate sites for the facility or facilities, as well as a No Action alternative as required by NEPA. As a result of this environmental review process, DOE identified the Waste Control Specialists, LLC location near Andrews, Texas, as the Preferred Alternative in the 2011 FEIS. EPA reviewed both the Draft and Final EIS's on March 29, 2010 and February 28, 2011, respectively, and rated the proposed action LO (Lack of Objections).

DOE has now decided to reconsider the range of reasonable alternatives evaluated in earlier EISs. This DSEIS submitted by DOE for review includes three new locations for a long-term mercury surface storage facility that are on or near the Waste Isolation Pilot Plant (WIPP) site near Carlsbad, New Mexico.

Based upon our review and analysis of the DSEIS, EPA rates the document as "EC-2" (Environmental Concerns- Request for Additional Information). The EPA's Rating System Criteria can be found here: <http://www.epa.gov/oecaerth/nepa/comments/rating.html>. The "EC" rating is based on potential impacts to air quality, and tribal coordination. The "2" indicates the DSEIS does not contain sufficient information for air quality mitigation, and Tribal consultation. We have enclosed detailed comments which more clearly identify our concerns and the informational needs requested for incorporation into the Final SEIS (FSEIS). Responses to comments should be placed in a dedicated section of the FSEIS and should include the specific location where the revision, if any, was made. If no revision was made, a clear explanation should be included.

EPA appreciates the opportunity to review the DSEIS. Please send our office two copies of the FSEIS, and an internet link, when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Federal Building, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20004. Our classification will be published on the EPA website, www.epa.gov, according to our responsibility under Section 309 of the CAA to inform the public of our views on the proposed Federal action. If you have any questions or concerns, I can be reached by e-mail at smith.rhonda@epa.gov or by phone at 214-665-8006. You may also contact Michael Jansky of my staff at jansky.michael@epa.gov or 214-665-7451 for assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Rhonda Smith", followed by a horizontal flourish.

Rhonda Smith
Chief, Office of Planning
and Coordination

Enclosure

**DETAILED COMMENTS
ON THE
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT
PREPARED BY
THE U.S. DEPARTMENT OF ENERGY
FOR THE
LONG-TERM MANAGEMENT AND STORAGE OF ELEMENTAL MERCURY**

BACKGROUND

The Department of Energy (DOE) evaluated seven candidate sites in their 2010 and 2011 Mercury Storage EISs for the storage of elemental mercury, as well as a No Action Alternative as required under NEPA. The candidate sites considered were:

- DOE Grand Junction Disposal site near Grand Junction, Colorado;
- DOE Hanford site near Richland, Washington;
- Hawthorne Army Depot near Hawthorne, Nevada;
- DOE Idaho National Laboratory near Idaho Falls, Idaho (2 locations);
- DOE Kansas City Plant in Kansas City, Missouri;
- DOE Savannah River Site near Aiken, South Carolina; and
- Waste Control Specialists, LLC, site near Andrews, Texas.

DOE identified the Waste Control Specialists, LLC location near Andrews, Texas, as the Preferred Alternative. Since publication of the 2011 FEIS, DOE has decided to reconsider the range of reasonable alternatives evaluated. The scope of this Draft Supplemental Mercury Storage SEIS includes three additional locations on or near the WIPP site near Carlsbad, New Mexico.

The three additional elemental mercury storage site locations evaluated in this DSEIS are in:

- 1) Section 20, Township 22 South, Range 31 East within the land subject to the WIPP Land Withdrawal Act (Pub. L. 102-579) as amended;
- 2) Section 10, Township 22 South, Range 31 East, in the vicinity of WIPP, but outside of the lands withdrawn by the WIPP Land Withdrawal Act; and
- 3) Section 35, Township 22 South, Range 31 East, also outside of the lands withdrawn by the WIPP Land Withdrawal Act. Each of these locations is suitable for an above-ground storage facility and can take advantage of existing roads and other infrastructure.

After further evaluation, the Waste Control Specialists, LLC location near Andrews, Texas remains the Preferred Alternative. However, the preferred alternative may or may not change as a result of comments received on this DSEIS. To finalize your Draft NEPA document, the following comments are now offered for your consideration.

COMMENTS

Air Quality

Section 4.5 – Mitigation Measures (pg. 4-46): This section of the DSEIS states that “(a)ctivities associated with the establishment of a new mercury storage facility(ies) would follow standard procedures for minimizing construction impacts on such resources as air quality...”. Considering the prevalence of wind-blown dust/particulate matter as an air quality concern for the region of New Mexico that this project is located in, EPA recommends that, in addition to all applicable local, state, or federal requirements, additional mitigation measures be included in a construction emissions mitigation plan.

Recommendation: EPA recommends the following additional mitigation measures be incorporated into the plan in order to reduce air quality impacts associated with emissions of Particulate Matter (PM), as well as Nitrous Oxide (NO_x), Carbon Monoxide (CO), Sulfur Dioxide (SO₂), and other pollutants from construction-related activities. The control measures recommended for your consideration are:

Fugitive Dust Source Controls:

- Stabilize open storage piles and disturbed areas by covering and/or applying water or chemical/organic dust palliative where appropriate at active and inactive sites during workdays, weekends, holidays, and windy conditions;
- Install wind fencing and phase grading operations where appropriate, and operate water trucks for stabilization of surfaces under windy conditions; and
- Prevent spillage when hauling material and operating non-earthmoving equipment and limit speeds to 15 miles per hour. Limit speed of earth-moving equipment to 10 mph.

Mobile and Stationary Source Controls:

- Plan construction scheduling to minimize vehicle trips;
- Limit idling of heavy equipment to less than 5 minutes and verify through unscheduled inspections;
- Maintain and tune engines per manufacturer's specifications to perform at EPA certification levels, prevent tampering, and conduct unscheduled inspections to ensure these measures are followed;
- If practicable, utilize new, clean equipment meeting the most stringent of applicable Federal or State Standards. In general, commit to the best available emissions control technology. Tier 4 engines should be used for project construction equipment to the maximum extent feasible;
- Lacking availability of non-road construction equipment that meets Tier 4 engine standards, the responsible agency should commit to using EPA-verified particulate traps, oxidation catalysts and other appropriate controls where suitable to reduce emissions of diesel particulate matter and other pollutants at the construction site; and
- Consider alternative fuels and energy sources such as natural gas and electricity (plug-in or battery).

Administrative controls:

- Prepare an inventory of all equipment prior to construction and identify the suitability of add-on emission controls for each piece of equipment before groundbreaking;
- Develop a construction traffic and parking management plan that maintains traffic flow and plan construction to minimize vehicle trips; and
- Identify sensitive receptors in the project area, such as children, elderly, and infirmed, and specify the means by which impacts to these populations will be minimized (e.g. locate construction equipment and staging zones away from sensitive receptors and building air intakes).

Tribal Resources

The DSEIS indicates that State Historic Preservation Officers (SHPO)s were contacted regarding cultural and historical resources, but it does not specify whether Tribes or Tribal Historic Preservation Officers (THPO)s were contacted for the purposes of coordination under National Historic Preservation Act (NHPA) Section 106. The DSEIS states that DOE has an obligation to consult with Native Americans (DSEIS Section 5.4); however, there is no information in the DSEIS or documentation letters to confirm government-to-government consultation with Tribes under E.O. 13175 occurred.

Recommendation: To address this concern, EPA recommends that DOE include information in the FEIS that confirms:

- 1) potentially affected Tribes, tribal resources and citizens were identified, and
- 2) appropriate contact was made with the Tribal officials of potentially affected Tribes (beyond the narrow context of working with THPOs or SHPOs on issues related to historic properties (NHPA), or
- 3) the agency otherwise concluded that there were no tribes or tribal resources that would be affected and there was no need for such contact or consultation.

